

LEGISLATIVE BILL 78

Approved by the Governor May 4, 1989

Introduced by Warner, 25

AN ACT relating to the Public Service Commission; to amend sections 75-111 to 75-118, 75-128, 75-136, 75-140, 75-155, 75-301 to 75-304, 75-305 to 75-307, 75-309, 75-311, 75-348, 75-358, 88-530, 88-531, 88-532, 88-543, 88-545, and 88-547, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to investigatory powers; to change provisions relating to examinations; to change provisions relating to records and reports; to change penalty provisions; to provide for judicial review as prescribed; to provide an administrative remedy for certain violations by carriers as prescribed; to provide for notice and a hearing; to change provisions relating to filing petitions; to define a term; to require insurance for certain commercial motor carriers; to provide for transportation service by transportation cooperatives as prescribed; to change provisions relating to grain warehouse licenses and security requirements; to change penalty provisions for warehouse licensees; to provide penalties for partners, officers, and agents of warehouse licensees; to change enforcement powers of the commission; to provide duties for the Revisor of Statutes as prescribed; to eliminate certain penalties; to harmonize provisions; to provide severability; and to repeal the original sections, and also sections 75-309.02 and 75-322.01, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 75-111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-111. The commission shall investigate any and all cases of alleged neglect or violation of the laws of this state by any motor carrier as defined in section 75-302 or other common carrier subject to the provisions of sections 75-101 to 75-801, doing business

in this state, or by the officers, agents, or employees thereof, and take such action with reference thereto as may be provided by law.

Sec. 2. That section 75-112, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-112. The commissioners and examiners, for the purposes mentioned in sections 75-101 to 75-801, shall have power to administer all oaths, to compel the attendance of witnesses, to examine any of the books, papers, documents, and records of any motor carrier as defined in section 75-302 or common carrier subject to the provisions of sections 75-101 to 75-801, or have such examination made by any person or persons that they may employ for that purpose, to compel the production of such books, papers, documents, and records, or to examine under oath, or otherwise, any officer, director, agent, or employee of any such ~~common~~ carrier, or any other person. Any ~~Provided~~, any person or persons employed by the commission to examine such books, papers, documents, or records shall produce his or her authority, under the hand and seal of the commission, to make such examination. The commissioners shall have the power to certify to all official acts of the commission.

Sec. 3. That section 75-113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-113. The commission may, in its discretion, prescribe the forms of any and all accounts and records to be kept by a motor carrier as defined in section 75-302 or common carriers subject to its jurisdiction, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of money. The ~~Provided~~, that the commission shall not prohibit any ~~common~~ such carrier from capitalizing on its balance sheet the value of any certificate or permit held by such ~~common~~ carrier. The commission shall at all times have access to all accounts, records, and memoranda kept by such ~~common~~ carriers, and it shall be unlawful for any such ~~common~~ carrier to keep any other accounts, records, or memoranda than those prescribed or approved by the commission, except as provided in this section.

Sec. 4. That section 75-114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-114. Any motor carrier as defined in section 75-302, any common carrier, or any ~~or~~ other person who may have in his or her possession any book,

paper, document, or record belonging to any common carrier subject to the provisions of sections 75-101 to 75-801, and who shall, upon proper demand, fail or refuse to exhibit to any commissioner, or any person authorized by the commission to investigate the same, any book, paper, document, or record of such common carrier, which is in the possession or under the control of such common carrier, or any officer, agent, or employee thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense a sum not less than one thousand dollars nor more than five thousand dollars Class III misdemeanor. Any officer, agent, or employee of any common carrier, or any other person who shall, upon proper demand, fail or refuse to exhibit to any commissioner, or any person authorized by the commission, to investigate the same, in a book, paper, document, or record of such common carrier, which is in the possession or under the control of such person, shall be guilty of a misdemeanor, and upon conviction shall be fined for each offense a sum of not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than ten days nor more than thirty days, or both Class III misdemeanor for each offense.

Sec. 5. That section 75-115, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-115. The commission shall have the power to examine and inspect, from time to time, the condition of each motor carrier as defined in section 75-302 or each common carrier, its the carrier's equipment, and the manner of its the carrier's conduct and management, with regard to the public safety and convenience in the state. If any part thereof is found in an unsafe and dangerous condition, the commission shall immediately notify the common such carrier whose duty it is to put the same in repair, which shall be done by it within a reasonable time after receiving such notice. If any common such carrier fails to perform this duty, the commission may enjoin and prevent it from operating the same while in such unsafe and dangerous condition, or may after notice and hearing order such common carrier to make reasonable improvements of its service, facilities, and equipment as are necessary.

Sec. 6. That section 75-116, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-116. Every motor carrier as defined in section 75-302 or common carrier required to furnish an

annual report with a federal regulatory agency shall file a copy of the same with the commission on or before the date on which such report is filed with ~~said~~ such agency. Every ~~common~~ such carrier not required to file an annual report with a federal regulatory agency, shall file an annual report with the commission in the form prescribed by the commission, on or before April 30 of each year.

Sec. 7. That section 75-117, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-117. Any motor carrier as defined in section 75-302 or common carrier which fails, neglects, or refuses shall fail, neglect, or refuse to comply with any order of the commission shall be guilty of a misdemeanor, and shall be fined in the sum of five dollars. Class IV misdemeanor. Each day during which such failure, neglect, or refusal shall continue shall constitute a separate offense. If ~~PROVIDED, that if~~ a motion be is filed for a rehearing, or to set aside the order, or if the order be is appealed, ~~from~~ the ~~common~~ carrier shall not be subject to such penalty during the pendency of such motion or such appeal.

Sec. 8. That section 75-118, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-118. The commission shall have the power and duty to:

(1) Fix all necessary rates, charges, and regulations governing and regulating the transportation, storage, or handling of freight and passengers by any common carrier in Nebraska intrastate commerce;

(2) Make all necessary classifications of freight and property of whatsoever character that may be transported, stored, or handled by any common carrier in Nebraska intrastate commerce, such classifications applying to and being the same for all common carriers;

(3) Investigate all through rates from points without the state to points within the state, or from points within the state to points without the state, and upon finding such through rates to be excessive or unreasonable, ~~to~~ call that fact to the attention of the common carrier involved, and if appropriate action is not taken within a reasonable period of time, ~~to~~ present the facts to the federal governmental agency having jurisdiction over the same, and appeal to such agency for relief;

(4) Prevent and correct the unjust

discriminations set forth in section 75-126; and

(5) Enforce all statutes and commission regulations pertaining to rates; and, if necessary, ~~to~~ institute actions in the appropriate court of any county in which the common carrier involved operates except actions instituted pursuant to section 75-140 and sections 15 to 17 of this act. All suits shall be brought and penalties recovered in the name of the state; by or under the direction of the Attorney General.

Sec. 9. That section 75-128, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-128. It is hereby declared to be the policy of the Legislature that all matters presented to the commission be heard and determined without delay. All matters requiring a hearing shall be set for hearing at the earliest practicable date and in no event, except for good cause shown, which showing shall be recited in the order, shall the time fixed for hearing be more than six months after the date of filing of the application, complaint, or petition on which such hearing is to be had. Except as otherwise provided in section 75-121 and except for good cause shown, a decision of the commission shall be made and filed within thirty days after completion of the hearing or after submission of affidavits in nonhearing proceedings. Applications for commission approval of specific new rates or charges or changes in existing rates or charges for telephone service which have not been heard and determined within six months and thirty days from the date the application was filed may be put into effect by the common carrier, in an amount not to exceed seventy-five percent of the total amount of the application, subject to refund of any amount collected in excess of the amount which would have been collected under the new or changed rates or charges as finally approved by the commission. The refund shall include an interest payment at a rate of interest determined by the commission, except that the rate of interest shall not exceed the overall rate of return which the common carrier is authorized to earn. When making its final determination on the application, the commission shall not consider the rates and charges of the company put into effect pending such final determination. This section shall not apply to rates or charges placed into effect under section 75-616. In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except

that it shall not be necessary to have prepared prior to commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-125 75-121. For each application, complaint, or petition filed with the Public Service Commission, except those filed under sections 75-301 to 75-335 and sections 15 to 17 and 26 of this act, there shall be charged a filing fee to be determined by the commission, but in an amount not to exceed the sum of fifty dollars payable at the time of such filing. There shall also be charged to persons regulated by the commission a hearing fee of fifty dollars for each half day of hearings if the person regulated by the commission files an application, complaint, or petition which necessitates a hearing.

Sec. 10. That section 75-136, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-136. If a party to any proceeding is not satisfied with the order entered by the commission other than an order entered under sections 15 to 17 of this act, such party may appeal to the Supreme Court as provided in section 75-137 to reverse, vacate, or modify the order. In the case of an order entered under sections 15 to 17 of this act, the party may (1) seek the review of the Supreme Court as provided in section 75-137 or (2) seek judicial review of the order under section 11 of this act. Subdivisions (1) and (2) of this section are mutually exclusive and the choice of either section 75-137 or section 11 of this act shall govern the appeal process.

Sec. 11. (1) Proceedings for review of an order entered under sections 15 to 17 of this act shall be instituted by filing a petition in the district court of Lancaster County or in the district court of the county in which the party is domiciled within thirty days after the date of the mailing of a copy of the order by the commission to the party appealing. All parties of record shall be made parties to the proceedings for review. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in a civil action. The court, in its discretion, may permit other interested persons to intervene. The filing of the petition or the service of the summons upon the commission shall not automatically stay enforcement of a decision. The commission may stay enforcement of a decision, or the court may order a stay after notice to

the commission of application for a stay upon such terms as it deems proper and shall require the party requesting such stay to give bond in the amount specified in the order entered under sections 15 to 17 of this act and conditioned as the court directs. Within fifteen days after service of the petition or within such further time as the court for good cause shown allows, the commission shall prepare and transmit to the court the verbatim testimony transcribed by the official stenographer, including all exhibits, which shall constitute the bill of exceptions. The pleadings, order appealed, and bill of exceptions duly certified to by the secretary of the commission shall constitute the complete record. A copy of the original order appealed, certified to be a true and correct copy by the secretary or a commissioner, shall be admitted in evidence as prima facie evidence of every fact found and that such order is prima facie just and reasonable.

(2) The review shall be conducted by the court without a jury on the record of the commission.

(3) The court may affirm the decision of the commission or remand the case for further proceedings or may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the decision is:

(a) In violation of constitutional provisions;

(b) In excess of the statutory authority or jurisdiction of the commission; or

(c) Arbitrary or capricious.

(4) The commission or such party shall have the right to appeal the decision of the district court to the Supreme Court under the same rules now provided by law for appeals to the Supreme Court, except that in no case shall security for such appeal be required when security is taken by the commission.

(5) The review provided by this section shall not be available in any case when other provisions of law prescribe the method of appeal.

Sec. 12. That section 75-140, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-140. Whenever any common carrier shall violate or refuse or neglect violates or refuses or neglects to obey any order or orders of the commission, which have been finally established, the commission, or any company or person interested in such order or orders, may apply in a summary way, by petition, to the district court of the county in which the violation or disobedience of such order or orders shall happen;

Lancaster County alleging such violation or disobedience, as the case may be. The court shall have power to determine the matter, on such notice to the common carrier complained of, as the court shall deem reasonable. The ~~and~~ notice may be served on such common carrier, or its officers, agents, or servants, as the court shall direct.

Sec. 13. That section 75-155, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-155. Unless a more specific criminal penalty is provided, any person knowingly and willfully violating any provision of Chapter 75, ~~or~~ any rule, regulation, or order of the commission, or any term or condition of any permit or certificate issued by the commission shall be guilty of a Class IV misdemeanor. Each day of such violation shall constitute a separate offense.

Sec. 14. That section 75-301, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-301. It is hereby declared to be the policy of the Legislature to (1) regulate transportation by motor carriers in intrastate commerce upon the public highways of Nebraska in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers, in the public interest, ; (2) promote adequate economical and efficient service by motor carriers, and reasonable charges therefor, without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices, ; (3) improve the relations between and coordinate transportation by, and regulation of, motor carriers and other carriers, ; (4) develop and preserve a highway transportation system properly adapted to the needs of the commerce of Nebraska, ; (5) cooperate with the several states and the duly authorized officials thereof, ; and (6) cooperate with the Interstate Commerce Commission in the administration and enforcement of the Federal Motor Carrier Act, 1935, approved by the President on August 9, 1935. The Legislature declares that all of the available carriage service, including common carriage by rail and road, and contract carriage by road, are so interdependent that the public may not continue to have a safe, dependable transportation system unless contract carriers operating on the same roads with common carriers are brought under just and reasonable regulations bringing their service

into relation with common carriers.

The commission is hereby directed to stringently enforce all provisions of Chapter 75, article 3, and section 75-126 so as to promote, encourage, and ensure a safe, dependable, responsive, and adequate transportation system for the public as a whole.

Sec. 15. (1) In addition to other penalties and relief provided by law, the commission may assess a civil penalty of up to five thousand dollars against any person, motor carrier, common carrier, or contract carrier for the violation of (a) any provision of Chapter 75, article 3, or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3, (b) any term, condition, or limitation of any certificate or permit issued pursuant to Chapter 75, article 3, or (c) any rule, regulation, or order of the commission issued pursuant to Chapter 75, article 3. The amount of civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of such violator in attempting to achieve compliance after notification of the violation is given.

(2) When any person, motor carrier, common carrier, or contract carrier is accused of any violation listed in subsection (1) of this section, the commission shall notify such person, motor carrier, common carrier, or contract carrier in writing (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular statute, certificate, permit, rule, regulation, or order purportedly violated, (c) that a hearing will be held and the time, date, and place of such hearing, (d) that in addition to the civil penalty, the commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the commission, such civil penalty may be collected by civil action in the district court of Lancaster County.

Sec. 16. Any hearing held pursuant to section 15 of this act shall be held pursuant to rules and regulations adopted and promulgated by the commission. Every decision and order rendered by the commission after such hearing is held shall be in writing and

accompanied by findings of facts and conclusions of law. The decision or order shall be sent to the parties by certified or registered mail.

Sec. 17. A civil penalty assessed pursuant to section 15 of this act and unpaid shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of Lancaster County. Any civil penalty collected shall be transmitted within thirty days from receipt to the State Treasurer for deposit in the permanent school fund.

Sec. 18. That section 75-302, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-302. As used in sections 75-301 to ~~75-322-01~~, unless the context otherwise requires, 75-322 and sections 15 to 17 and 26 of this act and in all rules and regulations prescribed by the commission pursuant thereto, unless the context otherwise requires:

(1) Person shall mean any individual, firm, copartnership, corporation, company, association, or joint-stock association; and ~~includes shall include~~ any trustee, receiver, assignee, or personal representative thereof;

(2) Commission shall mean the Public Service Commission;

(3) Certificate shall mean a certificate of public convenience and necessity issued under ~~this article Chapter 75, article 3.~~ to common carriers by motor vehicle;

(4) Permit shall mean a permit issued under ~~this article Chapter 75, article 3.~~ to contract carriers by motor vehicle;

(5) Intrastate commerce shall mean commerce between any place in this state and any other place in this state and not in part through any other state;

(6) Highway shall mean the roads, highways, streets, and ways in this state. ~~Any~~ ~~PROVIDED~~, any way or means of egress or ingress used by motor dump trucks engaged in construction work shall be construed as a highway for purposes of sections 75-301 to ~~75-322-01~~ ~~75-322 and sections 15 to 17 and 26 of this act~~;

(7) Motor vehicle shall mean any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property; but ~~does~~ shall not include any vehicle, locomotive, or car operated exclusively on a rail or rails;

(8) Motor carrier shall mean any person owning, controlling, managing, operating, or causing to be operated any motor-propelled vehicle used in transporting passengers or property for hire over any public highway in this state;

(9) Common carrier shall mean any person who or which undertakes to transport passengers or property for the general public in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes, upon the highways of this state; and

(10) Contract carrier shall mean any motor carrier transporting passengers or property for hire other than as a common carrier, except , PROVIDED, that any contract carrier providing for hire transportation services on or before January 1, 1972, designed to meet the distinct needs of each individual customer or a specifically designated class of customers shall not have any limitation as to the number of customers it can serve within the class; and

(11) Civil penalty shall mean any monetary penalty assessed by the commission due to a violation of Chapter 75, article 3, or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3, any term, condition, or limitation of any certificate or permit issued pursuant to Chapter 75, article 3, or any rule, regulation, or order of the commission issued pursuant to Chapter 75, article 3.

Sec. 19. That section 75-303, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-303. The provisions of sections Sections 75-301 to 75-322-01 75-322 and sections 15 to 17 and 26 of this act shall apply to the transportation of passengers or property by motor carriers for hire engaged in intrastate commerce except:

(1) A motor carrier for hire engaged in the transportation of school children and teachers to and from school;

(2) A motor carrier for hire operated in connection with a part of a streetcar system;

(3) A motor carrier for hire engaged in the transportation of newspapers under a contract with the publisher or a distributor thereof if no other property or person is being transported for hire on the same load with such newspapers;

(4) The operation of any motor carrier owned in any city or village of this state engaged in the transportation of property within such city or village or within a radius of five miles beyond the corporate

limits thereof;

(5) To ranch, dairy, or farm products, including livestock, being transported by motor vehicle from or to any ranch, dairy, farm, feedlot, or any market;

(6) To supplies or merchandise being transported by motor vehicle from or to any ranch, dairy, feedlot, or farm for use thereon when originating at or destined to a neighboring trading point or points;

(7) To ambulances or their owners, or to hearses, or to automobiles used exclusively as an incident to conducting a funeral;

(8) To motor vehicles owned and operated by any industrial, processing, or manufacturing plant when used by such plant in the transportation of raw materials and supplies to its plant or plants, or in the delivery of its products, supplies, or raw materials to purchasers thereof, when not for hire;

(9) To star route carriers employed by the post office department of the United States while operating a motor vehicle not exceeding one-half ton manufacturer's rated capacity on their regular routes;

(10) To wrecked or disabled motor vehicles being transported by winch or tow truck;

(11) To a motor carrier exempt by the provisions of subdivision (1) of this section who hauls for hire, (a) persons of a religious, fraternal, educational, or charitable organization, (b) pupils of a school to athletic events, (c) players of American Legion baseball teams when the point of origin or termination is within five miles of the domicile of the carrier, and (d) the elderly, as defined in section 13-1203, and their spouses and dependents, as defined in section 13-1203, under a contract with a municipality or county authorized in section 13-1208;

(12) To motor vehicles, owned and operated by farmers or ranchers, when hauling gravel or other road building material by agreement with the county board of the county in which their farms or ranches are situated for use upon the public roads within such county, and where when the compensation for the use of such motor vehicles shall not exceed the reimbursement for the motor vehicle fuel used during such hauling;

(13) A motor carrier operated by a city and engaged in the transportation of passengers and such exempt operations shall be no broader than those authorized in intrastate commerce at the time the city or other political subdivision assumed ownership of the operation;

(14) Motor vehicles owned and operated by a nonprofit organization which has been exempted from the payment of federal income taxes, as provided by section 501(c)(4), Internal Revenue Code of 1954, transporting solely those persons over age sixty, those persons who are spouses and dependents of persons over age sixty, and the handicapped;

(15) A motor carrier engaged in the transportation of passengers operated by a transit authority created under and acting pursuant to the laws of the State of Nebraska;

(16) A motor carrier operated by a municipality or county as authorized in section 13-1208, in the transportation of the elderly;

(17) Motor vehicles having a seating capacity of twenty or less, which are operated by a governmental subdivision or a qualified public-purpose organization, as defined in section 13-1203, engaged in the transportation of passengers in the state; and

(18) A motor carrier engaged in the transportation or movement of livestock and poultry feed, or livestock and poultry feed and related health products and supplements when transported in the same vehicle, between a livestock and poultry feed manufacturer and the manufacturer's dealer as long as such transportation is performed on a vehicle licensed under the provisions of section 60-305.09 or 60-331.

Sec. 20. That section 75-304, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-304. The commission may, from time to time, establish such just and reasonable classifications of groups of carriers, included in the terms common carrier or contract carrier, as the special nature of the services performed by such carriers shall require; and such just and reasonable rules, regulations, and requirements, to be observed by the carrier so classified or grouped, as the commission deems necessary or desirable in the public interest and as are consistent with the provisions of sections 75-301 to ~~75-322-01~~ 75-322 and sections 15 to 17 and 26 of this act. All certificates and permits, heretofore or hereafter issued by the commission, shall be construed and interpreted, and the operations authorized thereunder shall be tested and determined, in accordance with such classification so established; and any rule, regulation, or requirement prescribed by the commission relating to such carrier so classified.

Sec. 21. That section 75-305, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

75-305. For the purpose of sustaining the administration and enforcement of sections 75-301 to ~~75-322-01~~ 75-322 and sections 15 to 17 and 26 of this act, there is hereby fixed an application fee of seventy-five dollars payable by the applicant at the time of filing the application. In addition thereto, every motor carrier subject to the provisions of such sections ~~75-301 to 75-322-01~~ shall pay an annual fee not exceeding the sum of twenty-five dollars for each motor vehicle operated, which shall be fixed by the commission and shall not exceed the amount actually necessary to sustain the administration and enforcement of such sections. ~~75-301 to 75-322-01~~. When the applicant has registered his or her motor vehicles under the provisions of section 60-305.09, such fee of twenty-five dollars shall be payable on whichever shall be the lesser of (1) the proportion of his or her fleet so registered; or (2) the number of motor vehicles owned by him or her and actually used in intrastate business within this state, except that such annual fee for any truck-trailer or tractor-trailer combination shall be forty dollars. In the case of a truck-trailer or tractor-trailer combination, only one license plate shall be required for such combination. Such annual fees shall be due and payable on or before January 1 and shall be delinquent on March 1 of each year after such permit or certificate shall have been issued. ~~PROVIDED~~ If ~~PROVIDED~~ if the initial certificate or permit is issued to a motor carrier on or after July 1, the fee shall be fifty percent of the annual fee. Such fees shall be paid to and collected by the commission, and deposited with the State Treasurer within thirty days from the receipt thereof. The money so received shall be paid into the state treasury and by the State Treasurer placed in the General Fund.

Sec. 22. That section 75-306, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-306. Receipt for the payment of annual fees shall be issued by the commission in triplicate. The original shall be delivered to the motor carrier and two copies retained by the commission. The commission shall issue a license plate or plates and renewal tab or tabs to any motor carrier who is in compliance with the provisions of sections 75-301 to ~~75-322-01~~ 75-322 and sections 15 to 17 and 26 of this act and the rules and regulations of the commission; for the purpose of

identification of motor carriers subject to the provisions of such sections 75-301 to 75-322-01, and to distinguish the same from other commercial motor carriers not subject to such sections 75-301 to 75-322-01. The Director of Motor Vehicles shall prepare a form of license plates and renewal tabs for such motor carriers, and furnish a sufficient supply of the same to the commission.

Sec. 23. That section 75-307, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-307. No certificate or permit shall be issued to a motor carrier or remain in force unless such carrier complies with such reasonable rules and regulations as the commission shall prescribe, governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount as the commission may require, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate or permit, or for loss or damage to property of others. The commission may, in its discretion and under such rules and regulations as it shall prescribe, require a commercially licensed motor carrier of property excepted by section 75-303 which is not otherwise required to register with the commission pursuant to sections 75-348 to 75-358 to conform to the same filing and approval requirements. The commission may, in its discretion and under such rules and regulations as it shall prescribe, require any ~~such~~ common certificated carrier to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in a sum to be determined by the commission, to be conditioned upon such carrier making compensation to shippers or consignees, for all property belonging to shippers or consignees, and coming into the possession of such carrier in connection with its transportation service. Any carrier, which may be required by law to compensate a shipper or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible, shall be subrogated to the rights of such shipper or consignee under any such bond, policies of insurance, or other securities or agreements, to the

extent of the sum so paid. In carrying out the provisions of this section, the commission may classify motor carriers taking into consideration the hazards of the operations of such carriers and the value of commodities carried, but nothing contained in this section shall be construed as authorizing the commission to compel motor carriers other than common carriers to carry cargo insurance.

Sec. 24. That section 75-309, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-309. It shall be unlawful for any common or contract carrier by motor vehicle subject to the provisions of Chapter 75, articles 1 and 2, ~~of this chapter~~ and sections 75-301 to ~~75-322-01~~ 75-322 and sections 15 to 17 and 26 of this act to engage in any intrastate operations on any public highway in Nebraska unless there is in force with respect to such common carrier a certificate of public convenience and necessity, or a permit to such contract carrier, issued by the commission authorizing such operations.

Sec. 25. That section 75-311, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-311. A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found after notice and hearing that the applicant is fit, willing, and able properly to perform the service proposed, and to conform to the provisions of sections 75-301 to ~~75-322-01~~ 75-322 and sections 15 to 17 and 26 of this act and the requirements, rules, and regulations of the commission thereunder and that the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or property, is or will be required by the present or future public convenience and necessity, and otherwise such application shall be denied. A permit shall be issued to any qualified applicant therefor, authorizing in whole or in part the operations covered by the application, if it appears after notice and hearing from the application or from any hearing held thereon that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of sections 75-301 to ~~75-322-01~~ 75-322 and sections 15 to 17 and 26 of this act and the lawful requirements, rules, and regulations of the commission thereunder, and that the proposed operation, to the extent authorized by the

permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (10) of section 75-302. Otherwise, such application shall be denied. No person shall at the same time hold a certificate as a common carrier and a permit as a contract carrier authorizing operation for the transportation of property by motor vehicles over the same route or within the same territory, unless the commission shall find that it is consistent with the public interest and with the policy declared in section 75-301. After the issuance of a certificate or permit, the commission shall review the annual reports of all common or contract carriers filed with the commission to determine if there are insufficient operations in the transportation of regulated commodities to justify the commission's finding that such common or contract carrier has willfully failed to perform transportation under the provisions of sections 75-301 to 75-322 and sections 15 to 17 and 26 of this act and rules and regulations promulgated thereunder. If the commission determines that there is such insufficiency of operations, then the commission shall commence proceedings under the provisions of section 75-315 to revoke the certificate or permit involved.

Sec. 26. (1) A transportation cooperative consisting of cooperative associations as defined in 12 U.S.C. 1141j, as amended, may provide transportation service solely to its member cooperative associations without applying for or receiving a certificate or permit from the commission to provide such service if it meets the following requirements:

(a) The transportation cooperative has no greater power or purpose other than to provide service to its member cooperative associations;

(b) The transportation cooperative has its principal place of business in the State of Nebraska and has been incorporated under the laws of the State of Nebraska;

(c) Each member cooperative association has its principal place of business in the State of Nebraska and has been incorporated under the laws of the State of Nebraska;

(d) The voting control and all other indicia of ownership of the transportation cooperative is vested in the member cooperative associations;

(e) The transportation cooperative provides transportation service solely to its member cooperative

associations:

(f) The transportation cooperative files a notice with the commission identifying a new member at least thirty days prior to the provision of service to the new member;

(g) The transportation cooperative maintains insurance coverage consistent with the commission's requirements;

(h) Each driver utilized by the transportation cooperative is exclusively the employee of the transportation cooperative;

(i) The transportation cooperative does not directly or indirectly lease equipment from any employee of the transportation cooperative;

(j) The transportation cooperative owns or has long-term leases for all equipment used by it to provide service and a copy of each such lease is filed with the commission; and

(k) The transportation cooperative files an annual report for the preceding year with the commission. The report shall be filed on October 15, 1989, and by April 30 each year thereafter. The report shall identify the transportation cooperative's members, the power units it owns, and the liability insurance coverage it maintains.

(2) Each transportation cooperative formed after the effective date of this act shall file a report containing all the information required to be filed under subdivision (1)(k) of this section with the commission at least thirty days prior to the commencement of service to its member cooperative associations.

(3) A cooperative association comprised of other cooperative associations may not qualify as a member of a transportation cooperative for purposes of this section.

(4) If a transportation cooperative operates as a for-hire carrier in violation of this section, the transportation cooperative shall no longer qualify to furnish transportation service as provided in this section and shall be subject to the penalties provided in section 75-155 and sections 15 to 17 of this act for operating as a common or contract carrier without a certificate or permit.

Sec. 27. That section 75-348, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-348. Except as otherwise provided, it shall be unlawful for any common, contract, or private

carrier of property by motor vehicle in interstate commerce to operate any motor vehicle within this state without first having registered with the Public Service Commission in accordance with the provisions of sections 75-348 to 75-358, except, ~~PROVIDED~~, that it shall not be necessary for such common, contract, or private carrier to prove public convenience and necessity as a condition for such registration. The provisions of sections 75-348 to 75-358 shall not apply to motor vehicles leased for thirty days or less and shall not apply to motor vehicles on which annual fees are paid under the provisions of section 75-305 and which are owned and operated by common carriers or contract carriers which presently hold or which in the future may hold certificates of public convenience and necessity or permits issued by the Public Service Commission pursuant to the provisions of sections 75-301 to 75-322-01 75-322 and sections 15 to 17 and 26 of this act.

Sec. 28. That section 75-358, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-358. Any person knowingly and willfully violating any provision of sections 75-348 to 75-358 or any rule or regulation of the commission; or any term or condition of any registration shall be guilty of a Class IV misdemeanor and shall, upon conviction thereof, be punished by a fine not less than twenty-five dollars nor more than two hundred dollars for the first offense, and not less than fifty dollars nor more than five hundred dollars for any subsequent offense shall also be subject to the provisions of sections 15 to 17 of this act. Each day of such violation shall constitute a separate offense.

Sec. 29. That section 88-530, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

88-530. Each applicant shall show sufficient net worth or stockholders' equity to conform with the financial requirements which the commission shall establish by the adoption and promulgation of rules and regulations. Applicants shall file with the commission security in the form of a bond, a certificate of deposit, or an irrevocable letter of credit, United States bonds or treasury notes, or other public debt obligations of the United States which are unconditionally guaranteed as to both principal and interest by the United States in such sum as the commission may require and in the form and of the kind

prescribed by the commission. The security which shall not be less than one thousand dollars for any warehouse licensee who receives grain from producers in wagon or truckload lots and not less than twenty-five thousand dollars for those who receive grain in carload lots. ~~Such bond, certificate of deposit, or letter of credit~~ The security shall run to the State of Nebraska for the benefit of each person who stores grain in such warehouse and of each person who holds a check for purchase of grain stored in such warehouse which was issued by the warehouse licensee not more than five business days prior to the cutoff date of operation of the warehouse, which shall be the date the commission officially closes the warehouse. ~~Such bond, certificate of deposit, or letter of credit~~ The security shall be conditioned upon (1) the warehouse licensee carrying combustion, fire, lightning, and tornado insurance sufficient to cover loss upon all stored grain in such warehouse, (2) the delivery of the grain upon surrender of the warehouse receipt, and (3) the faithful performance by the warehouse licensee of all provisions of law relating to the storage of grain by such warehouse licensee and ~~the~~ the rules and regulations of adopted and promulgated by the commission. The commission may require increases in the amount of the security from time to time as it may deem necessary for the protection of the storers. The surety on a bond shall be a surety company licensed by the Department of Insurance. An irrevocable letter of credit or certificate of deposit shall be issued by a federally insured depository institution.

The security shall particularly describe the warehouse intended to be covered by the security. The liability of the surety on a bond shall not accumulate for each successive license period which the bond covers. The liability of the surety shall be limited to the amount stated on the bond or on an appropriate rider or endorsement to the bond.

Sec. 30. That section 88-531, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

88-531. Only one license shall ~~may~~ be required for the operation of all warehouses operated by one warehouse licensee if:

(1) (a) The warehouses are located in the same city, village, or legally described location or on the same siding;

(b) The warehouses are operated with the same working force;

(e) Only one set of books is kept for the warehouses; and

(d) (2) Cost slips, scale tickets, warehouse receipts, and checks are issued in one series for grain received or stored in such warehouses; ~~or~~ and

(2)(a) The warehouses are located within twenty-five miles of each other;

(b) Only one set of books is kept for the warehouses at a central location; and

(e) (3) The warehouses are operated in conjunction with each other.

If the commission finds that enforcement of the Grain Warehouse Act or the interests of the storers requires that warehouses operated by the same licensee at separate locations be licensed separately, it may require separate licenses for such facilities pursuant to rules and regulations adopted and promulgated by the commission.

The license fee and security required of such warehouse licensee shall be computed on the basis of the separate capacities of each warehouse.

Sec. 31. That section 88-532, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

88-532. Upon payment of the license fee and approval by the commission of the application and the bond, certificate of deposit, ~~or~~ irrevocable letter of credit, or other security described in section 88-530, the license shall be issued. A new or renewed license shall expire twelve calendar months after the effective date of the issuance or renewal of such license. A license may be kept in continuous force and effect if the warehouse licensee files a proper application for renewal and security which the commission can approve prior to the date of termination.

Notice of the security in the form prescribed by the commission shall be posted in a conspicuous place in each warehouse showing the amount of security on the stored grain. Each warehouse licensee shall also post in a conspicuous place in each warehouse office the storage fees and receiving and load-out fees charged for each type of grain stored.

Sec. 32. That section 88-543, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

88-543. No warehouse licensee or partner, officer, or agent thereof shall issue a receipt for grain not actually received. If at any time there is less grain in a warehouse than outstanding receipts

issued for grain, there shall be a presumption that the warehouse licensee or partner, officer, or agent thereof has wrongfully removed grain, has wrongfully caused grain to be removed, or has issued receipts for grain not actually received, and has violated this section. Any warehouse licensee or partner, officer, or agent thereof who knowingly and willingly violates this section shall be guilty of Class IV felony.

Sec. 33. That section 88-545, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

88-545. The commission shall enforce the Grain Warehouse Act and shall adopt and promulgate rules and regulations to aid in the administration of the act. Any person or partner, officer, or agent of any person who violates the Grain Warehouse Act shall be guilty of a Class IV felony, unless otherwise specifically provided, and shall be liable for any damages suffered by any person from such violation. Upon request of the commission, the Attorney General or any county attorney shall assist in the prosecution of any violations of the act.

Sec. 34. That section 88-547, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

88-547. If the commission determines that a shortage of grain exists or that the quality of grain in storage is insufficient to meet the obligations at a warehouse, or if a license expires and is not renewed, or if a license is surrendered to or cancelled or revoked by the commission for violation of any statute or rule or regulation adopted and promulgated by the commission, the commission may close the warehouse and do one or more of the following:

(1) Take title to all grain stored in the warehouse at that time in trust for distribution on a pro rata basis to all valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. No claim of the licensee for grain stored shall be honored until the claims of all other owners, depositors, and storers have been paid in full. Such distribution may be made in grain or in proceeds from the sale of grain;

(2) After notice and hearing (a) determine the value of the shortage and the pro rata loss to each owner, depositor, or storer of grain, (b) require all or part of the warehouse security to be forfeited to the commission, and (c) distribute the security proceeds on such pro rata basis; or

(3) Commence a suit in district court for the benefit of owners, depositors, or storers of grain.

The commission may deposit the proceeds from the security forfeiture under subdivision (2) of this section or the sale of grain under subdivision (1) of this section in an interest-bearing trust account for the benefit of the valid owners, depositors, or storers of grain pending final determination of the valid owners, depositors, or storers and distribution of such proceeds.

Sec. 35. The Revisor of Statutes shall assign section 11 of this act within sections 75-101 to 75-155 and any reference to sections 75-101 to 75-155 shall include section 11 of this act.

Sec. 36. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 37. That original sections 75-111 to 75-118, 75-128, 75-136, 75-140, 75-155, 75-301 to 75-304, 75-305 to 75-307, 75-309, 75-311, 75-348, 75-358, 88-530, 88-531, 88-532, 88-543, 88-545, and 88-547, Reissue Revised Statutes of Nebraska, 1943, and also sections 75-309.02 and 75-322.01, Reissue Revised Statutes of Nebraska, 1943, are repealed.